

# Comhairle Chontae Atha Cliath Theas

**PR/0618/22**

## Record of Executive Business and Chief Executive's Order

**Reg. Reference:** SD17A/0172/EP      **Application Date:** 25-Mar-2022  
**Submission Type:** New Application      **Registration Date:** 25-Mar-2022

**Correspondence Name and Address:** Alan Davis 23, Knocklyon Close, Dublin, 16.

**Proposed Development:** Demolish a single storey extension at side, erect a 2 storey, 4 bedroom semi-detached dwelling (end of terrace) at front, side and rear including reconstruction of existing front vehicular entrance to provide vehicular access for new and existing dwellings (revisions to previously approved plans SD13A/0163). The proposal includes demolishing a conservatory extension and construction of a single storey extension to rear of existing dwelling.

**Location:** 23, Knocklyon Close, Knocklyon, Dublin 16.

**Applicant Name:** Alan Davis

**Application Type:** Extension Of Duration Of Permission

(EW)

Site Area: 0.029Hectares.

Site Description:

The corner site is located in an established residential estate and contains a two storey detached dwelling with pitched roof profile. The streetscape of Knocklyon Close is characterised by semi-detached houses of similar form and appearance and by a uniform building line.

**Proposal:**

The applicant is seeking to **extend the duration of permission by a period of 5 years for SD17A/0172**, which relates to works to an incomplete part of a previously approved development (previously granted planning permission under South Dublin County Council register reference SD13A/0163, now elapsed):

**Proposal:**

- Demolition of single storey extension to side,
- Construction of new 2 storey detached dwelling,
- Reconstruction of existing entrance to provide new vehicular entrance,

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- Revisions to previously permitted SD13A/0163,
- Demolition of existing single store rear extension,
- Construction of single store rear extension to rear of existing dwelling.

### **Proposal for Extension of Duration of Permission:**

The final grant date for SD16A/0338 was issued on the 04<sup>th</sup> of September 2017. The permission expires on the 04<sup>th</sup> of September 2022 (excluding s.251 Order dates).

The application for Extension of Duration was received on the 25<sup>th</sup> of March 2022, which was before the date of expiry of the permission, and not more than one year before this.

### **Zoning:**

The subject site is subject to zoning objective RES - 'To protect and / or improve Residential Amenity'.

### **Consultations:**

No referrals required.

*SEA Sensitivity Screening* – No overlap indicated

### **Relevant Planning History**

SD17A/0172 (Subject Application)

**Permission Granted** to demolish a single storey extension at side, erect a 2 storey, 4 bedroom semi-detached dwelling (end of terrace) at front, side and rear including reconstruction of existing front vehicular entrance to provide vehicular access for new and existing dwellings (revisions to previously approved plans SD13A/0163). The proposal includes demolishing a conservatory extension and construction of a single storey extension to rear of existing dwelling.

SD13A/0163- **Permission Granted** by SDCC for new 2 storey 3 bed dwelling to side and single storey extension to rear of existing dwelling  
Not commenced

SD07A/0770 & PL06S.226973- **Permission Granted** by SDCC and An Bord Pleanala for alterations to SD07b/0265 including subdivision of site to provide 2 separate 3 bed houses.  
Not commenced

SD07A/0770EP- **extension of duration of permission granted** by SDCC

SD07B/0265- permission granted for ground and first floor extension to side and single storey extension to the rear

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*Not commenced.*

### **Relevant Enforcement History**

None recorded for subject site

### **Legislation:**

#### Terms

'The 2000 Act' means The Planning and Development Act 2000, as amended.

'The 2016 Act' means The Planning (Housing) and Residential Tenancies Act 2016, as amended.

'The 2018 Act' means the Planning and Development (Amendment) Act 2018.

'The 2021 Act' means the Planning and Development (Amendment) Act 2021.

'The Regulations' means The Planning and Development Regulations 2001, as amended.

#### Summary of Recent Changes to Legislation

Previously, the Planning Authority was able under s.42(1)(a)(ii) of the 2000 Act to grant extensions of duration of permission for developments which had not commenced, where it was satisfied that there were considerations of a commercial, economic or technical nature beyond the control of the applicant which substantially militated against either the commencement of development or the carrying out of substantial works pursuant to the planning permission.

s.42(1)(a)(ii) was deleted from the 2000 Act by way of the commencement of s.28(1) of the 2016 Act. **No commencement of works has taken place.** Extensions of permission under s42(1) of the 2000 Act can only be granted under s42(1)(a)(i), which lists as a requirement that works shall have commenced.

On the same day, s.7 of the 2021 Act was commenced which provided a new s.42B of the 2000 Act. Section 42B sets out a new section 42(1B) to temporarily appear in s42. It is noted that Section 42 was only construed to include (1A) until the 31<sup>st</sup> of December 2021 under s.28 of the 2016 Act. Since this was removed Section (1B) is now construed to be renumbered and referred to as (1A).

Section 42(1A) provides for extensions of permission to December 2023 and various criteria for making such extensions. One of these criteria is that works have been commenced and substantial works carried out.

**There is therefore no facility in the 2000 Act for extensions of duration of permission where works have not commenced.**

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### Detail of Current Legislation

The power to extend the duration of a planning permission is governed by Section 42 of the 2000 Act and by Articles 40–47 inclusive of the Regulations.

Section 42 of the 2000 Act has been amended and has effect as per the following legislation:

- s.28 of the Planning and Development (Amendment) Act 2010;
- s.5(7) of the Local Government Act 2014;
- s.28(2) of the Planning and Development (Housing) and Residential Tenancies Act, 2016;
  - Itself amended by s.1 of the Planning and Development (Amendment) Act 2017.
- s.28(1) of the Planning and Development (Housing) and Residential Tenancies Act, 2016;
  - Itself amended by s.57(1) the Planning and Development (Amendment) Act 2018.
  - All commenced in August 2021.
- S. 7 of the Planning and Development (Amendment) Act, 2021.
  - Also commenced in August 2021.

**NB:** Both s.28(1) of the 2016 Act (as amended by the 2018 Act) and s.7 of the 2021 Act amend provide for amendments to s42(4).

Subsequently, until the 31<sup>st</sup> of December 2023, section 42 (1) and (1A) of the 2000 Act has effect as if it reads as follow (this includes a reading as described in s42B)(emphasis added by author):

'42.

*(1) On application to it in that behalf, but subject to subsection (8), a planning authority shall, as regards a particular permission, extend the appropriate period by such additional period not exceeding 5 years as the authority considers requisite to enable the development to which the permission relates to be completed provided that each of the following requirements is complied with:*

*(a) (i) the authority is satisfied that—*

*(I) the development to which the permission relates was commenced before the expiration of the appropriate period sought to be extended,*

*(II) substantial works were carried out pursuant to the permission during that period, and*

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- (III) *the development will be completed within a reasonable time,*
- (b) *the application is in accordance with such regulations under this Act as apply to it,*
- (c) *any requirements of, or made under those regulations are complied with as regards the application, and*
- (d) *the application is duly made prior to the end of the appropriate period.*
- (1A) *Notwithstanding anything to the contrary in subsection (1) or (4) a planning authority shall—*
- (a) *as regards a particular permission in respect of a development, and*
  - (b) *upon application being duly made to the authority setting out the reasons why the development cannot be reasonably completed within the appropriate period, further extend the appropriate period, as extended or further extended, by such additional period not exceeding 2 years or until 31 December 2023, whichever first occurs, but the authority shall only so extend that period where the authority—*
    - (i) *is satisfied that an environmental impact assessment or an appropriate assessment would not be required in relation to the proposed extension of the appropriate period,*
    - (ii) *considers that the extension is required to enable the development to which the permission relates to be completed,*
    - (iii) *is satisfied that the application is in accordance with such regulations under the Planning and Development Acts 2000 to 2021 as apply to the application,*
    - (iv) *is satisfied that any requirements of, or made under, those regulations are complied with as regards the application,*
    - (v) *is satisfied that the development to which the permission relates was—*
      - (I) **commenced, and**
      - (II) **substantial works were carried out, before the expiration of the appropriate period, as extended or further extended,** and
    - (vi) *is satisfied that in the case of a permission—*
      - (I) *where the expiry of the appropriate period as extended or further extended occurred or occurs during the period beginning on 8 January 2021 and ending on the day before the date on which section 7 of the Planning and Development (Amendment) Act 2021 comes into operation, the application is duly made within 6 months of the date on which the said section 7 comes into operation, or*
      - (II) *where the appropriate period, as extended or further extended, expires on or after the date on which section 7 of the Planning and Development (Amendment) Act 2021 comes into operation, the application is duly made within the period prescribed for the purposes of section 43(2).’,*

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### Assessment:

Noting recent changes to the 2000 Act (see "Summary of Recent Changes to Legislation" above), there are 2 subsections under which an extension of duration of permission can be granted. These are subsections (1) and (1A) of section 42 of the Act.

There are 3 criteria under subsection (1), listed under clause (a)(i). Criteria (I) and (II) require that the Planning Authority must be satisfied that the development "was commenced before the expiration of the appropriate period sought to be extended" and that "substantial works were carried out pursuant to the permission during that period". This is not the case in relation to the subject application. The applicant states '*not commenced*' on the application form that the date development commenced and particulars of substantial works carried out is not applicable.

There are 6 criteria under subsection (1A), listed under clause (b). Criterion (v) requires that (I) works have commenced, and (II) substantial works were carried out prior to the expiration of permission. This is not the case in relation to the subject application. The applicant states '*not commenced*' on the application form that the date development commenced and particulars of substantial works carried out is not applicable.

### Conclusion:

The application was made after changes in the Planning and Development Act which have removed the statutory basis for an extension of duration of permission where works have not commenced, and substantial works have not taken place. In precise terms, the criteria set down in s42(1)(a)(i) or s42(1A)(b)(v) are not met in this instance, and the Planning Authority therefore cannot grant permission for an extension of duration of permission.

### Recommendation:

I recommend that a decision to Refuse Ext of Duration Of Permission be made under the Planning and Development Act 2000 (as amended), for the following reason(s):-

#### **Reasons:**

1. The criteria set down in s42(1)(a)(i) or s42(1A)(b)(v) are not met in this instance, and the Planning Authority therefore cannot grant permission for an extension of duration of permission. In each case the Planning and Development Act 2000 (as amended) sets out as necessary criteria that works have commenced and substantial works must have taken place.

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**REG. REF. SD17A/0172/EP**

**LOCATION: 23, Knocklyon Close, Knocklyon, Dublin 16.**


*Colm Harte*

**Colm Harte,  
Senior Executive Planner**

**ORDER:** A decision pursuant to Section 42 of the Planning and Development Act 2000 (as amended), for the application to extend the period for which the above mentioned planning permission has effect, is hereby made to refuse for the reason(s), as set out above.

**Dated:**

*17/5/22*



**Eoin Burke, Senior Planner**